

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5631 of 1986****For Approval and Signature:****HONOURABLE MR.JUSTICE K.A.PUJ**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PREMILABEN R. UPADHYAYA - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MR ANAND for Petitioner(s) : 1, MR DIPAK C RAVAL for
Petitioner(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 1, 4,
None for Respondent(s) : 2, 5,
MR VIJAY H PATEL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**Date : 21/12/2005****ORAL JUDGMENT**

1. The petitioner has filed this petition under

Article 226 of the Constitution of India, praying for the declaration that the impugned resolution dated 29.9.1986 passed by the Himmatnagar Panchayat is illegal, unconstitutional, without jurisdiction, null, void and of no effect whatsoever. The petitioner has also prayed for the direction to the respondent to treat the petitioner as having continued in service for all purposes and to give the benefits of service as if the impugned resolution has not been passed at all.

2. This Court has passed an order on 28.10.1986 and granted ad interim relief in terms of para-18 of the petition, whereby the respondents were restrained from implementing the resolution dated 29.9.1986 and order dated 23.9.1986 and were further restrained from terminating the services of the petitioner. The petition was, thereafter, admitted and rule

was issued on 15.4.1988 and interim relief stood continued.

3. It is the case of the petitioner that the petitioner was appointed as Female Field Worker, by order dated 7.1.1983 issued by the Chairman of the Himmatnagar Nagar Panchayat, in exercise of the powers conferred by Section 102 of the Gujarat Panchayats Act. At the time when the petitioner was appointed, the view of the Government of Gujarat was that the Panchayat service is a separate service and is not a part of the State service. Accordingly, the employees employed in exercise of the powers conferred by Section 102 of Act, working under Gram or Nagar Panchayats were not held to be State servants, and they were held to be employees of the respective Gram or Nagar Panchayats. This view was adopted by the Government of Gujarat by amending certain

provisions of the Act to nullify the effect of the judgment given of this Court in R.K.Soni's case.

4. It is further stated that R.K.Soni's case was upheld by the Hon'ble Supreme Court and the Panchayat employees including the Gram and Nagar Panchayats employees were held to be State servants. It is further stated the post of Field Worker is held to be of District Cadre, as provided by the Gujarat District Panchayat Service Selection Committee (Functions) Rules, 1964. The post of Field Worker is mentioned in the Schedule to the said Rules as the District Cadre. If the petitioner was taken in the District Cadre, there were number of juniors to the petitioner in the cadre of Field Worker and those persons were appointed by order dated 14.6.1984. It is further stated that the petitioner could not

have been terminated while retaining her juniors in service.

5. It is further stated that there were two Field Workers in the Town Family Welfare Center. The salary of the Field Workers was received by the Himmatnagar Nagar Panchayat by way of hundred percent grant from the State Government. The Male Field Worker who was working with the Himmatnagar Nagar Panchayat, retired some time in August, 1986. At that time, the question regarding payment of benefits of Pension, Gratuity, C.P.F., etc, arose. The Himmatnagar Nagar Panchayat, therefore, wrote to the Jt. Director of Health and Medical Services and Medical Education regarding payment of Pension, Gratuity, etc., to the office employees, as their salaries were hundred percent paid by the Government. The Jt. Director of Health and Medical Services and

Medical Education, by his letter dated 24.4.1986 informed the Himmatnagar Nagar Panchayat that the employees of the local bodies were not considered to be the employees of the State and, therefore, it was for the Himmatnagar Nagar Panchayat to take the decision as to payment of Pension and Gratuity. This correspondence was discussed in the General Body meeting of the Himmatnagar Nagar Panchayat held on 29.5.1986, wherein it was decided that if the Government was not ready to pay the amount of Pension and Gratuity of the employees working in the Town Welfare Center, the Himmatnagar Nagar Panchayat was not ready to run such a center and it was decided that the Government may be informed accordingly. It was further stated that since the State Government has not replied, the Himmatnagar Nagar Panchayat decided to close down its Town Family Center with effect from 31.10.1986 and

decided to terminate the services of the petitioner, and accordingly resolution was passed on 29.9.1986 and petitioner's services were terminated with effect from 31.10.1986. It is this resolution as well as the termination order which are under challenge before this Court.

6. Mr.D.C.Ravel, learned advocate appearing for the petitioner submitted that the work of Family Planning is very much needed in this area and the Government is ready to pay hundred percent grant for the salary of the petitioner and of even another employee for whom the post was vacant. It was further submitted that the judgment rendered by this Court in R.K.Soni's case is very clear. He has further submitted that Government has to decide as to who has to bear the expenses and it is the internal arrangement between these authorities and

services of the petitioner cannot be terminated on that ground. He has further submitted that the benefit of C.P.F., Pension, Gratuity is available to all public servants in the Panchayat service which is a part of the State service and this benefit should not be denied to the petitioner alone. It is further stated that the order passed by the Himmatnagar Nagar Panchayat is discriminatory and arbitrary and the same is required to be quashed and set aside while exercising writ jurisdiction under Article 226 of the Constitution of India.

7. Mr.Raval further submitted that at the time when the petition was filed the petitioner has put in 3 to 4 years of service and question of C.P.F, Pension and Gratuity had not arisen and hence, non-payment of the grant by the Government towards payment of C.P.F, Pension and Gratuity could hardly be a ground for

immediate termination of the petitioner's service, particularly when the Government is ready and willing and is in fact, paying hundred percent grant for the payment of salary of the petitioner and other employee. He has, therefore, submitted that the order passed by the Himmatnagar Nagar Panchayat is violative of Articles 14 and 16 of the Constitution of India.

8. Petition was opposed by Himmatnagar Nagar Panchayat as well as State Government and affidavit in reply was filed on 12.12.1986. It was stated that the appointment was purely temporary and the petitioner's services could be terminated at any time. It is further stated that the Nagar Panchayat was not entitled to receive the amount of P.F. Pension and Gratuity of the employees working under the Panchayat. It is further stated that in view of the

interim relief granted by this Court she is continued in service. The petitioner has filed rejoinder to the affidavit in reply and sur rejoinder is filed on behalf of the Himmatnagar Nagar Panchayat. In the sur rejoinder similar contentions were reiterated.

9. The State Government has filed affidavit in reply on 24.5.2002. Mr.L.B.Dabhi, learned AGP appearing for the respondent State has submitted that no rights much less, fundamental rights of the petitioner are violated by the present respondents and, therefore, the petition filed by the petitioner is not maintainable. He has further submitted that the petitioner was appointed as Female Filed Worker by Himmatnagar Nagar Panchayat by order dated 7.1.1983 under the Family Welfare Center run by the said Nagar Panchayat. Under the scheme of the Central Government, the

Government of India is paying 100% grant for the staff employed in such Family Welfare Centers to the State Government and in turn, the State Government is disbursing the grant to such Family Welfare Centers only for pay and allowances. He has also denied the fact that some juniors to the petitioner are continued in service. He has further submitted that the junior persons cited by the petitioner were not working under the Nagar Panchayat but they were working in District Panchayat, Himmatnagar. He has, therefore, submitted that State Government is only a disbursing agent of hundred percent grant given by the Central Government to the organisations or local bodies which are running Family Welfare Centers. It is further stated that such posts are not regular sanctioned posts of the State Government. Therefore, the petition filed by the petitioner is not tenable at law. It is further submitted that the Field

Workers of District Panchayats are selected by the District Panchayats Service Selection Committee, while the Field Workers of Nagar Panchayats are selected by the President of the Nagar Panchayat. He is also informed vide letter dated 11.9.1981 issued by the Government of India, wherein it is mentioned that the Central Government is only providing financial assistance to the implementing agencies in respect of only the salary and allowances to the staff and not other fringe benefits like Pension, Gratuity, L.T.C. Medical Reimbursement, etc. The Central Government does not prescribe any service conditions of the staff as those are left to the respective employers. He has, therefore, submitted that the claim of the petitioner for Pension and Gratuity cannot be accepted as she is not a State or District Panchayat servant but only employee of Nagar Panchayat to whom State

Government is paying grant in aid for pay and allowances only to run the Family Welfare Centers. He has, therefore, submitted that the petitioner is not entitled to any relief claimed in the petition and hence the petition deserves to be dismissed.

10. After having heard the learned advocates appearing for the respective parties and after having gone through the facts stated and averments made in the petition, affidavit in reply, rejoinder and sur rejoinder, the Court is of the view that the petitioner was appointed as Field Worker under the policy framed by the Central Government. She has been continued in service for four years and thereafter because of the dispute that arose between the State Government and the Nagar Panchayat, the petitioner's services were terminated. As such, the petitioner's services

were not terminated on the issue with regard to payment of P.F., Gratuity as well as other benefits. The said issue arose in connection with the other employees. However, because of the stand taken by the State Government, the Nagar Panchayat has decided to close down the Family Welfare Center and terminated the services of the petitioner. The petitioner has challenged the said order as well as resolution of the Nagar Panchayat. This Court has granted interim stay. The said interim relief is continued till this date. Despite the fact that the Family Welfare Center was closed down, the petitioner was absorbed in Nagar Panchayat and the work of dispatch clerk is being taken from her. The petitioner is already in service for the last more than 22 years. Therefore, it cannot be said that the petitioner is for a temporary period and her service can be terminated. The Court is, therefore, of the

view that the petitioner is entitled to continue in service.

11. As far as benefit with regard to Pension, Gratuity, Provident Fund etc., are concerned, it appears from the fact that the petitioner has not been regularly appointed. In view of the decision given by the Full Bench of this Court in the case of Amreli Municipality, reported in 2004(2) GLH 692, the Court cannot issue direction for regularisation.

12. In above view of the matter, the prayer made in the present petition for giving service benefit to the petitioner cannot be granted. At the same time since the petitioner has been in service for more than 22 years, her service cannot be terminated, it is open for the petitioner to make appropriate representation to the Nagarpalika, looking to the length of

her service to make her permanent and to grant service benefits. If such a representation is made, the same will be considered by the Nagarpalika, in accordance with law.

13. Subject to the aforesaid observations and directions, this petition is disposed off. Rule is made absolute without any order as to costs.

(K. A. PUJ, J.)

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